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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,478	01/23/2004	Jennifer Appel	020208-00200	7001
22904	7590	12/29/2005	EXAMINER	
LOCKE LIDDELL & SAPP LLP 600 TRAVIS 3400 CHASE TOWER HOUSTON, TX 77002-3095			ALIMENTI, SUSAN C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/763,478	APPEL, JENNIFER	
	Examiner	Art Unit	
	Susan C. Alimenti	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 October 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
 - 4a) Of the above claim(s) 12-16 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 and 17-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donhauser (USPN 4,371,995) in view of Tsay (US 5,822,920).

Donhauser discloses the claimed invention except the bottom of the plant container is not sloped. Donhauser's device comprises a plant container 52, adapted to retain soil, having a side 56 and bottom 54. A pump landing 12 is coupled to the plant container 52 and has a surface defined by lip 28 that is higher than the bottom 54 of plant container 52. The pump landing is sealing separated from container 52 and accessible from an exterior by lifting container 52. Tsay discloses a device in the same field of invention comprising a plant container 20 for growing plants, wherein the plant container has a sloped bottom 24 that acts to enhance the drainage effect of excess water. (Tsay, col.2, lns.31-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Donhauser's planting container by making the bottom 54 have a subtle slope on order to enhance the drainage effect via drainage system 70, 71, 60, and 68.

Regarding claim 2, a pump 74 is coupled to the pump landing 12.

Regarding claim 3, a water fountain spout 84 is coupled to the pump via conduit 80 and is adapted to spray water from the pump at a level above a water level in the plant container 52

Regarding claims 4 and 5, the pump 74 has a power cord 88 that passes through a channel that is *coupled* to the plant container 52.

Regarding claim 6, a valve 62 is mounted in the hollow cavity created by the pump landing 12. Said valve 62 is fluidly coupled to the interior portion of the plant container 52 and another port accessible on the exterior of said plant container 52. *Donhausen*, col.2, lns.63-64.

Regarding claim 7, conduit 80 is coupled to container 52 and supplies water to said container.

Regarding claim 8, Donhausen discloses the claimed invention except a hollow channel 68 is formed on the exterior of plant container 52, not the interior. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form channel 68 on the interior portion of container 52, since it has been held that a mere reversal of the essential working parts of an invention involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding the amended limitation to claim 8, the water that exits through drainage system 70, 71, 60 and 68 is moved to pump landing area 12, which is outside of plant container 52.

Claims 9-11 are rejected as described above to similarly limited claims.

Regarding claims 17, the predetermined location may be a location outside the planter 52 and fountain system in general via drain 50, which allows any water in the system to exit to the exterior.

Regarding claim 18, as taught by Tsay, the modified bottom would be sloped along the length thereof.

Finally regarding claim 19, channel 60 is *constructed* and *arranged* (emphasis added) to connect a conduit to drainage pipe 60 that would connect the drainage with system with pump 74.

Response to Arguments

3. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new grounds of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susan C. Alimenti



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER